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RIGHT OF ENEMY-OWNED CORPORATION TO RESORT TO COURTS OF OPPOSING BELLIGERENT.

In Fritz Schulz Jr. Co. v. Raimes & Co., 166 N. Y. Supp. 567, decided by New York Supreme Court, in Appellate Division, the question considered was as to right of a corporation organized in New Jersey, but with more than nine-tenths of its shares owned by a German corporation and a German citizen resident in Germany, to maintain an action in the courts of New York against a citizen or corporation of this country, this country and the Empire of Germany being in a state of war with each other.

The question arose on a motion by defendant to stay a suit brought by the New Jersey corporation from being further prosecuted until said war shall have been concluded. The motion was denied.

It appears that 47 of the 50 shares of stock are owned as above stated and the other three shares are owned by two Americans and an Austrian, residing here and who has declared his intention to become a citizen of the United States. These three persons constitute the board of directors of the corporation, but "practically the entire business of the corporation, technical as well as executive," is in the hands of its manager, the resident Austrian.

The Court regards it as true that our country is in the position of having issued "a formal declaration of war" with Germany and that it is "illegal for any resident of the United States to have any dealings with adherents" of Germany.

Then, the opinion says: "The case presents the interesting question, whether a corporation organized under the laws of one of the states of this country, but owned principally by alien enemies living in Germany, is to be precluded during the war from access to our courts. The corporation being organized under the laws of New Jersey, can, of course, be an alien enemy only if our courts have a right to look behind the corporate entity and determine the character of the corporation by the residence and character of its members." Reference is then made to a recent case in England, in which all of the capital stock except one share was held by subjects of Germany, as also were all of its directors. But despite this situation, the fact of the organization of the corporation under English law was held to give it the right to sue in the British courts. Daimler Co., Ltd., v. Continental Tire & R. Co. (1916), 2 App. Cas. 307.

The opinion in that case refers quite at length to decision by our Federal Supreme Court regarding right by corporations to remove causes for diversity of citizenship. Our Supreme Court started out with the principle that the court could in such cases go behind the corporate name and ascertain who composed a corporation and determine accordingly whether right of removal existed. Bank of United States v. Deveaux, 5 Cranch, 61.

The opinion then shows, that this ruling was departed from in subsequent cases, until the conclusion was reached that the citizenship of a corporation could not be inquired into, but there existed a presumption of law not to be defeated by evidence to the contrary that it resided in the state where chartered. St. Louis & S. F. R. Co. v. James, 161 U. S. 621.

The way in which this is stated in the James case is: "There is an indisputable legal presumption that a state corporation, when sued or being sued in a Circuit Court of the United States is composed of citizens of the state which created it, and hence such corporation is itself deemed to come

within that provision of the constitution of the United States which confers jurisdiction upon the federal courts in controversies between citizens of different states."

Do rulings made as to rights of citizens and corporations as to restrictions imposed or rights conferred, in respect of the domestic policy of this country, cover a case, where international law is involved, or the question is of giving aid and comfort to an opposing belligerent? Apparently not.

If it even were formerly regarded doubtful, whether a corporation as a citizen had a local habitation according to the charter of its creation, independently of who really owned it, *a fortori* would this doubt be reenforced by reasoning to the effect, that ultimately stockholders are the real owners. If it is to give aid and comfort to allow an alien enemy to sue in our courts, is it not the same thing for him to use an agency belonging to alien enemies, in final analysis?

The House of Lords reversed the ruling in the Daimler case on a technical point, but six of eight judges pointedly expressed themselves as disagreeing with the Court of Appeals. Lord Parker, one of the six, thought there was only *prima facie* right if a corporation owned by alien enemies but carrying on business in another belligerent country, to be deemed a friend, and he rejects the idea that individual shareholders are to be considered. If its agents take instructions from aliens the presumption of friendliness is lost.

It seems to us that this rule has nothing whatever of certainty about it. If aliens can presently or ultimately call agents to account for their actions, the corporation, their agency, should be considered as standing as they do. In these days of espionage and ruthlessness, it is the duty of belligerents to confer no rights on alien enemies by any kind of technical, fine-spun theories. If a corporation, to make use of a new term, is a *camouflage* for alien enemies, belligerents should show they appreciate it as such.

NOTES OF IMPORTANT DECISIONS.

CORPORATIONS — ACTION BETWEEN HOLDERS OF BONUS STOCK.—Hoffard v. Williams Shoe Co., 117 N. E. 17, decided by Supreme Court of Ohio, shows a case of a suit by the holder of preferred stock, who was given a bonus in common stock, to recover from others, because of the difference between him and them in their larger award of bonus stock. It was held that he and they were participants in an illegal contract and the law "leaves the parties where it finds them."

The Court said: "As is apparent from the history of the case it concerns the rights of holders of bonus or so-called 'sweetened' stock *inter sese*. No rights as between the participating and non-participating holders of such bonus stock are involved, as all are in the same position, except as to the degree of their participation, or, rather, as to the proportion of their holdings of the purely gratuitous stock. Of course, were there not this inequality of holding, there could be no law suit; for if each holder of preferred stock had received the same or an equal amount of common stock, there would be no advantage in the assessment, it being simply a case of paying in and then drawing out."

As showing wrongful knowledge barring the right of action, the Court said: "When the plaintiff in error took the common stock as a bonus, there is every reason to suppose he must have understood that the practice of adding a proportion of common to each purchase of preferred stock was the established custom of the company, and their acceptance of it under the circumstances implies knowledge of such a custom and is equivalent to an acquiescence on their part. Therefore, unless there be some peculiar circumstances, none of which, however, are pleaded, he must be denied recovery on the principle of estoppel. The fact that his participation in the wrong was not equal in degree to that of other stockholders is not in itself sufficient to warrant recovery against those who more largely participated in the wrongful issue."

Whether the issuance of bonus stock is in itself wrongful may depend, so far as stockholders *inter sese* are concerned, on statute. If a general scheme contemplated such issuance, presumptively it was to be in proper proportion. In such case the offer of bonus stock imports nothing wrong. If others acquired in larger proportion than a particular subscriber did, they ought to be made to respond to him on something like a presumption of wrong.

They should have inquired as to the authority of officers of the corporation as to the particular proportion offered. Everyone knows that equality is the rule among subscribers and it is *ultra vires* to depart therefrom.

CARRIERS OF GOODS—LIMITATION OF LIABILITY NOT APPLICABLE IN SUIT FOR CONVERSION.—In Goldstein v. Northern Pac. Ry. Co., 164 N. W. 143, decided by Supreme Court of North Dakota, it is held that, where suit is brought against a railroad for conversion of baggage, the question of delay or loss by negligence is not involved and, therefore, stipulation limiting liability is immaterial. The shipment in this case was intrastate, and reference is made to federal decision as to validity of stipulations limiting liability and the Court says: "While we agree with the United States Supreme Court that a passenger or shipper may not by a mere change of the form of action change the rights which in reality are based upon the shipping contract, still we are aware of no case wherein it has been held that by reason of a limitation of liability in the contract of carriage, a carrier may become the owner of goods intrusted to it for carriage, by wrongfully converting them to its own use and paying the shipper a mere fraction of their actual value. To so hold would give to the stipulation limiting liability a force and apply it to a purpose never contemplated by the contracting parties. Such stipulations, when valid, should be enforced in accordance with their terms to carry out the interest and the purposes contemplated by the contracting parties."

It may be said, in addition, that sound public policy and the rule that shipper and carrier do not stand on equal terms, and, therefore, not dealing at arms length with each other, prevents any construction of a contract limiting liability on any other theory, than that stated by the North Dakota court.

MARRIAGE AND DIVORCE — REMARRIAGE WITHIN FORBIDDEN PERIOD.—In North Dakota a statute declares, that dissolution of marriage, is by death, or by judgment decreeing a divorce and "the effect of a judgment decreeing a divorce is to restore the parties to the state of unmarried persons, except that neither party to a divorce may marry within three months after the time such decree is granted." In that state common law marriage is not recognized as valid.

The Supreme Court of that state held that, where a marriage ceremony was performed in the state within less than three months after a decree of divorce was rendered against one of the contracting parties, it was valid, because the statute did not in express terms declare that remarriage within the prohibited period should be void. Woodward v. Blake, 164 N. W. 156.

There were two of the three judges agreeing to this proposition—the third dissenting. One of the two judges says common law marriage is not recognized as valid in North Dakota; the other upholds the marriage "where for years parties live and cohabit together as husband and wife" and "where every marital and conjugal endearment becomes a ratification of the marriage right and so if every day they live together as husband and wife." Mainly, however, the two plant themselves on the proposition that there is, in the statute, no express declaration that the marriage within a prohibited time is void.

The dissenting judge cites strongly Bishop on Marriage and Divorce, wherein it is said: "If the same statute which authorizes the divorce provides that it should not operate to enable the divorced party to remarry * * * a new marriage in the same state would be void."

It seems to us, that, if a statute declares that the effect of a judgment decreeing a divorce is not to permit remarriage except after a stated time, this quite clearly declares, that the relation formerly existing is to continue for a time after the rendition of the decree, and there is no need of a court searching for policy of law in the face of so plain a statement. There is set out an incapacity to contract a new marriage relation.

REPORT OF THE COMMITTEE ON PROFESSIONAL ETHICS OF THE NEW YORK COUNTY LAWYERS ASSOCIATION.

QUESTION NO. 142.

Patent Attorneys; Relation to Client; Compensation of Attorney—Agreement between attorney and client in patent-suit, for compensating attorney by a per-diem fee for his own services, plus a per-diem fee for services of his salaried assistants. Attorney's claim for compensation for consultations with his salaried assistants.—Not disapproved.—Is it ethical for an attorney having charge of a suit in the Federal Court involving the validity of a patent, for the preparation and prosecution of which an investigation of technical matters is required,

(a) To enter into an agreement with the client that he, the attorney, shall receive a fixed per-diem compensation for his services and also a fixed per-diem compensation for the work of his technical assistants, who are not attorneys and are employed at a regular salary by the patent attorney, if the total compensation for the work of such assistants largely exceeds their salaries;

(b) To make charges, in accordance with such agreement, for consultations had between himself and such assistants, first, involving technical matters, and second, involving legal matters?

Is such an agreement consistent with professional propriety, insofar as it fixes the lawyer's compensation for time spent by his assistants without regard to the value of the latter's services, first, involving technical matters, and second, involving legal matters?

Can the attorney properly claim the difference between the salary of the assistants and the agreed per-diem compensation of the assistants?

ANSWER No. 142.

Assuming that the attorney has not practiced any deception upon his client and that the assistants are a part of the attorney's office organization, and so constitute a part of his equipment for the practice of patent law, in the opinion of the committee it is not improper for the attorney to enter into agreements of the character described in subdivision "(a)" of the question, nor to make charges in accordance with such agreement as described in subdivision "(b)" of the question, nor is such agreement inconsistent with professional propriety so far as it fixes the attorney's compensation for the time spent by his assistants, whether such consultations involved technical or legal matters, and the attorney may properly claim the difference between the salary of the assistants and their agreed per-diem compensation.

QUESTION No. 148.

Employment; Alien Enemies—Acceptance of retainers to represent interned alien enemies and to sue out writs of habeas corpus for them. —Not disapproved.—I desire to be advised as follows: If it be proper for an attorney to take a retainer with a view to interceding on behalf of alien enemies, in the event that they be interned by the authorities of the United States. By this intercession I mean that the attorney would be required to seek permission to interview the aliens at their internment camp and thereafter submit to the proper authorities whatever proof can be obtained with a view to their release.

Further, I desire to be advised, if the attorney be of the opinion that the authorities, both military and civil, acted without warrant for the apprehension of the aliens, would the attorney be justified in seeking to obtain a writ of habeas corpus if he found himself in a position wherein he might be required to obtain half a dozen writs for said aliens.

ANSWER No. 148.

In view of the sub-committee's report (which report this committee approves), it is the opinion of the committee that both inquiries should be answered in the affirmative. The sub-committee's report is as follows:

"In England it is settled law that an alien enemy, who is a prisoner of war, is not entitled to the writ of habeas corpus to examine into the propriety of his detention (Three Spanish Sailors, 2 W. Bl. 1324; Rex v. Schiever, 2 Burr 765). The question whether an alien enemy who is interned by the government has a different legal status from that of a prisoner of war, has recently been considered in England and Canada. In Rex v. Supt. of Vine St. Police Station; ex parte Liebmann (113 Law Times 971; Jan. 22, 1916) the King's Bench (Bailhache and Low JJ) held that a German subject residing in the United Kingdom, who in the opinion of the Executive Government is a person hostile to the welfare of the country, and is on that account interned, may properly be described as a prisoner of war, although not a combatant or a spy, and as such is not entitled to the writ of habeas corpus. A similar decision was rendered by the Canadian Court, in re Gusetu (1915), 24 Can. Crim. Cas. 427.

"In this country, the question whether an alien enemy who is a prisoner of war, is entitled to the writ of habeas corpus to review the legality of his detention has apparently never come before the courts. Much less has the question, whether an interned alien enemy is on the same footing as an alien enemy who is a prisoner of war, been considered by our courts. Under these circumstances, and until there has been a final ruling upon this subject, a lawyer, properly retained by an interned alien enemy or by his friends, would be justified in taking the proper legal proceedings to have the question of the legal status of the interned alien enemy, and of the legality of his internment, determined by the court. A person restrained of his liberty without a trial should have the right to apply by counsel to the ordinary judicial tribunals to have the legality of his detention determined, unless this question has been settled by decisions of such controlling authority as to render the application a useless proceeding."

WHY THE UNITED STATES LEADS THE WORLD IN THE RELATIVE PROPORTION OF MURDERS, LYNCHINGS AND OTHER FELONIES, AND WHY THE ANGLO-SAXON COUNTRIES NOT UNDER THE AMERICAN FLAG HAVE THE LEAST PROPORTION OF MURDERS AND FELONIES AND KNOW NO LYNCHINGS.

Supporting Judge Wade's interesting address "Respect for Law Fundamental in a Democracy," it might be well to state the facts that make necessary the discussion of such a problem.

Among the enlightened nations the United States leads the world in manumitting murders and enlarging felons, while Anglo-Saxon countries not under the American flag have the least percentage of murderers and felons.

Has any other nation laws which its courts of last resort characterize as "a shelter to the guilty," which "has no place in the jurisprudence of civilized and free countries outside the domain of the common law and it is nowhere observed among our own people in the search of truth outside the administration of the law"[1] or as "the privilege of crime."[2]

Ex-President William H. Taft in his address before the Civic Forum of New York City on April 28, 1908, said:

"And now, what has been the result of the lax administration of criminal law in this country? Criminal statistics are exceedingly difficult to obtain. The number of homicides one can note from the daily newspapers, the number of lynchings and the number of executions, but the the number of indictments, trials, convictions, acquittals, or mistrials it is hard to find. Since 1885 in the United States there have been 131,951 murders and homicides, and there have been 2,286 executions. In 1885 the number of murders was 1,808. In 1904 it has increased to 8,482. The number of executions in 1885 was 108. In 1904 it was 116. This startling increase in the number of murders and homicides as compared with the number of executions tells the story. As murder is on the increase, so are all offences of the felony class, and there can be no doubt that they will continue to increase unless the criminal laws are enforced with more certainty, more severity than they now are."

The criminal statistics referred to by ex-President Taft are those published by the Chicago Tribune either on New Year's Day or else on the last day of each year since 1885, showing the number of homicides and executions in the United States for each year.

The Chicago Tribune gives the number of homicides (including manslaughters) in the United States in 1912 as 9,152; the number of executions in 1912 as 145; it gives the number of homicides (including manslaughters) in 1913 as 8,902; the number of executions in 1913 as 88; it gives the number of homicides (and manslaughters) in 1914 as 8,251; the number of executions in 1914 (including 2 for another felony) as 74; it gives the number of homicides (and manslaughters) in 1915 as 9,230; the number of executions in 1915 (including 8 for another felony) as 119.

According to the Judicial Statistics, England and Wales, 1913,[3] there were reported to the police of England and Wales during the year 1913, 111 murders of persons aged more than one year and 67 murders of infants of one year or less. On these 178 reported English and Welsh murders, 67 persons were brought to trial for murder; there were 28 convictions and death sentences; 16 executions; 12 commutations to penal servitude for life; 5 accused were found insane on arraignment; 17 were found guilty but insane and 17 were acquitted.

In 1913, 154 manslaughters were reported to the English and Welsh police, on which

(1) Twining v. New Jersey, 211 U. S. 91, 113.
(2) State v. Wentworth, 65 Maine, 241.
(3) Part I, Criminal Statistics, pp. 18, 26.

136 persons were brought to trial, on which trials there were 63 convictions and sentences.

In 1914, the number of murders and manslaughters reported to the police of England and Wales is not given; 55 persons were brought to trial for murder; 23 were convicted of murder and sentenced to death; 14 were executed; the sentences of 8 were commuted to penal servitude for life; 12 were found guilty but insane; 11 by jury and 1 by court of Criminal Appeal; 6 were found insane on arraignment and 14 were acquitted including one quashed conviction by Court of Criminal Appeal.

In 1914, 117 were brought to trial in England and Wales for manslaughter, of which 48 were convicted and sentenced.[4]

According to the Canadian criminal statistics for the years ending Sept. 30, 1913, and September 30, 1914:

In 1913, 55 persons were charged with murder, of whom 23 were convicted and sentenced to death, 5 were detained for lunacy and 27 were acquitted.[5]

In 1914, 62 persons were charged with murder, of whom 27 were convicted and sentenced to death, 4 were detained for lunacy and 31 were acquitted.[6]

In 1913, 61 persons were charged with manslaughter, of whom 44 were convicted, 1 was detained for lunacy and 16 were acquitted.[7]

In 1914, 59 persons were charged with manslaughter, of whom 39 were convicted and 20 were acquitted.[8]

In 1913, also in 1914, two persons each year were charged with infanticide; all four were acquitted.[9]

(4) Judicial Statistics, England and Wales, 1914, Part I, Criminal Statistics, pp. 12-13.

(5) Criminal Statistics for the year ending September 30, 1913, p. 2.

(6) Criminal Statistics for the year ending September 30, 1914, p. 2.

(7) Criminal Statistics for 1913, pp. 8-10.

(8) Criminal Statistics for 1914, pp. 8-10.

(9) Criminal Statistics for 1913 and 1914, p. 10.

The population of the Dominion of Canada is given by the last census as 7,206,643.

Moorfield Storey[10] quoting Andrew D. White, says:

"The murder rate in the United States is from ten to twenty times greater than the murder rate of the British Empire and other northwestern European countries."

The World Almanac for 1911, 1912 and 1913, under "Statistics of Homicide," says convictions in Germany equalled 95 per cent and a fraction; in the United States 1.3 per cent.

Frederick L. Hoffman, Life Insurance Statician of Newark, New Jersey, says:[11]

"Our murder death rate (for, of course, the statistics used refer only to the recorded deaths from homicide and not to judicial convictions) for the registration area for the period 1909-1913 was 6.4 per 100,000 of population. The rate for England and Wales (1904-1913) was 0.8; for Prussia (1904-1913), 2.0; for Australia (1910-1913), 1.9; and finally, for Italy (1908-1912), 3.6. In other words, the number of murders in the United States at the present time, proportionate to population, is about 100 homicides for every thirteen committed in England and Wales, thirty in Australia, thirty-one in Prussia and fifty-six in Italy. * * * It admits of no argument that among the civilized countries of the world the United States stands to-day in deplorable contrast as regards the security of the person against the risk of homicidal death."

In addition to "The Statute" extending the privilege of avoiding self-incrimination, "in tenderness to the weakness of those who * * * * may have been in some degree compromised,[12] 21 out of our 48 States have either by constitution or statute reduced the trial judge in jury cases to a mere moderator by forbidding him from advising the jury on the facts or expressing his opinion on questions of fact, notwithstanding that all questions of fact in jury cases are left to the jury's sole and ultimate determination. This took away a judicial right and duty

(10) Reform of Legal Procedure, 196.

(11) "Homicide Record of American Cities for 1914," Spectator, December 23, 1915, p. 390.

(12) Wilson v. U. S., 149 U. S. 66.

which every English and Federal trial judge exercises to the public advantage. In 15 more of our States the state courts of last resort have by judicial decisions suppressed or abdicated their trial judges' right and duty to act as judges and have reduced them to mere moderators.[13]

Other results of statutory shelters to the guilty, statutory privileges of crime and statutory tenderness to the weakness of the compromised, accompanied by the trial judges in a majority of the States being forced to act as moderators and abdicate their inherent functions as judges to advise the jury on the facts.

Between 1882 and 1903 lynchings aggregating 3,337 were reported in 44 of our 49 continental States and Territories.[14] In other nations lynching now exists only in parts of rural Russia where the laws provide an inadequate punishment for horse stealing.[15] Lynching does not now exist anywhere under the British, French, Dutch or German flags (Cutler, Lynch Law, 1, 3), although all these nations have frontier and mixed race conditions in their colonies, dependencies and possessions, which if either mixed races or frontier conditions were primary causes of lynching, would lead to an amount of it in excess of anything we have ever known.

It is quite true that Anglo-Saxon popular tribunals and lynching originated in the marches of Scotland in the days of the border wars and was practiced also by the vehmgericht in Germany in the days when the power formerly exercised by the Hohenstaufen Emperors had been usurped by the robber knights; also that it was used in expelling Tories and desperadoes and confiscating their lands during the lawless times of and following the American revolution.[16]

(13) Edson R. Sunderland, Inefficiency of the American Jury, 13 Michigan Law Review, 307-316.

(14) Cutler, Lynch Law, 179-185.

(15) Cutler, Lynch Law, 3.

(16) Cutler, Lynch Law, 5-10, 13-36, 59-76, 88-89; I Bancroft Popular Tribunals, 2-7.

To understand popular tribunals and lynching, the attitude of the vigilants and their responsible supporters and neighbors is of more weight than that of the outlaws or the formal legalistic critics of the vigilants who confine their activity to destructive criticism and make no attempt to remedy the underlying causes that have led to popular tribunals, popular justice in 44 of our 49 continental States and Territories.

Dean J. E. Cutler and Judge George C. Holt attempted to ascertain the views of the neighbors and upholders of vigilants by questionnaires, but no answers of value were received.[17]

Hubert Howe Bancroft's Popular Tribunals justifies the two San Francisco vigilance committees (of 1851 also of 1856) as well as the other responsible vigilance committees of the Pacific Coast and what are now the Rocky Mountain States before the Civil War, on the ground of necessity, because the State and Territorial Governments had alike abdicated their primary duty to preserve life and enforce public order and security, also their duty to punish crime.[18]

Bancroft was the confidant of the leading vigilants and had the free use of their archives and records.

Bancroft says:[19]

"Sixteen executions in thirty years, dating back from 1847, the opening year of Yerba Buena's aspirations. These, with the four hangings by the Vigilance Committee of 1851, and four by that of 1856, comprise the catalogue. Millions of money has been paid by the citizens to keep running criminal courts and police regulations these thirty years, and hundreds of men were all the time at large whom the law pronounced guilty of death, and only sixteen capital punishments! Says the Sacramento Union of the 28th of May of the citizens composing the Committee of 1856:

" 'They have calmly stood by and seen and heard of some fourteen hundred mur-

(17) Cutler, Lynch Law, 155-7.

(18) 2 Bancroft Popular Tribunals, 666, 675-93; Cutler, Lynch Law, 132-5, 193-226.

(19) 1 Popular Tribunals, 748-9.

ders in San Francisco in six years, and only three of the murderers hung, under the law, and one of those was a friendless Mexican.'

"I have given in this volume many examples of Popular Tribunals, but the half has not been told. It is safe to say that thus far in the history of these Pacific States far more has been done toward righting wrongs and administering justice outside the pale of law than within it.

"Out of five hundred and thirty-five homicides which occured in California during the year 1855 there were but seven legal executions and forty-nine informal ones. Of the latter, ten occured in the month of January, not one of which would have been consummated if left to the machinery of law. So it was in Nevada ten years later; to one hundred and fifty homicides there were but two legal executions. It was the Augustan age of murder."

Bancroft quotes the London Times' view that if California's lax criminal law enforcement was so serious an evil as to need a vigilance committee "to supersede the law of the land in open day" to restore public order, it "could have no possible difficulty in amending the administration of this law had they directed their efforts to such purpose instead of dispensing with law altogether."[20]

Strong trial judges of the British Federal type, or a strong California criminal procedure of the English, Canadian or Australian type, which convicts the criminal instead of manumitting or enlarging him, was the last thing the vigilants or the Californians of 1851 to 1856 desired.

William T. Coleman (the president of the 1856 Vigilance Committee) wrote his executive committee:

"Keep all cases in California from judges, but have juries in all cases." (2 Bancroft, 616.)

Bancroft voicing the vigilant view says:

"There will be popular tribunals as long as evolution lasts. We are never going back to king worship or law worship." (2 Bancroft, 668.)

"Popular tribunals" and the so called "Right of revolution" were the vigilant ideals. (2 Bancroft Popular Tribunals 668-71, 675, 677-681, 154; Cutler, Lynch Law, 193-8, 226, 29-30, 72-3, 109-10; Royce, California, 421-2, 439-447, 465, 316-324.)

"But here on this coast had been law without order for years, and at last the people were determined to have order, even at the sacrifice, if necessary, of the forms of law. Law had become criminal, and must be put upon trial by the people for dereliction of duty." (2 Bancroft, 145.)

"For some few centuries yet the iron-bound dogmatism of ancient societies will continue to condemn the action and principles of popular tribunals. * * * They will continue to see no difference between a mob and a committee of vigilance, between a turbulent, disorderly rabble, hot with passion, breaking the law for vile purposes, and a convention of virtuous, intelligent, and responsible citizens with a coolnes of deliberation arresting momentarily the operations of law for the salvation of society. * * *

"But the time will come when intelligent men everywhere will acknowledge the superiority of this principle. * * * It will then be seen that that government is most stable which is founded on rectitude and independence, which relies for its support on the will of virtue-loving people, and not on tradition or inexorable law. It will then be seen, more clearly than now, that all power vests in the people, whether they chose to use it or to remain bound by superstitious veneration of shadow, that even after law is made and execution provided, the executive has no power except such as is daily and hourly continued to him by the people." (2 Bancroft, 670-1.)

In California the trial judge in jury cases is a mere moderator and is not allowed to advise the jury on any question of fact.[21]

Bancroft points out that Macaulay's prophecy of 1857 as to America's future danger was clearly inspired by San Francisco's two Vigilance Committees:

"Either some Cæser or Napoleon will seize the reins of government with a strong hand, or your republic will be as fearfully

(20) 2 Bancroft, 681-2.

(21) McMinn v. Whelan, 27 Cal. 300, 319-320; Sunderland, Inefficiency of the American Jury, 13 Michigan Law Review, 308-9.

plundered and laid waste by barbarians in the twentieth century as the Roman Empire was in the fifth; with this difference, that the Huns and Vandals who ravaged the Roman Empire came from without, and that your Huns and Vandals will have been engendered within your country by your own institutions."[22]

The vital features in which the English, Australian and Canadian criminal procedure differs from that of the majority of American criminal courts are the following:

1. The British, Scotch, Canadian, Australian, South African or Indian trial judge is a strong judge, not a mere moderator. He gives the jury the benefit of his experience and skill by advising them in difficult cases respecting the weight and effect of the evidence, what he believes the evidence had shown, but he also informs the jury that they are the sole judges of the facts and are at liberty to disregard his advice. The distinctive feature of Anglo-Saxon jury trials is a strong and experienced trial judge aiding and advising the jury, but leaving the ultimate decision of all disputed questions of fact to the jury, instead of acting as a weak and opinionless moderator, as the trial judge must do in three-fourths of our States. In Canada the judge may try most criminal cases without a jury where a jury is waived by defendant.

2. In Great Britain and Australia the trial judge in any criminal case where the defendant elects to stand mute (or fails to testify in his own behalf) may and generally does charge the jury that they may consider the defendant's failure to testify in his own behalf. New Jersey is the only American State where the trial judge may do this.

3. Blanket or joint indictments are allowed where (1) there are several charges against the defendant or defendants for the same act or transaction, (2) for two or more acts or transactions connected together, or (3) for two or more acts or transactions of the same class of crimes or offenses, as in the Federal Courts.

4. Short form simplified indictments merely charging defendant with the commission of any specified indictable offense in the very words of the statute, as for example "murder" or "grand larceny," supplemented by a bill of particulars when details are necessary.

5. Joint trials of all joint indictments are in the court's discretion, instead of separate trials being a matter of right.

6. Decisions of habeas corpus are final and conclusive as to the issues there involved. The unlimited number of writs of habeas corpus allowed in some American states for the same cause is unheard of anywhere in the British Empire.

7. Exceptions to rulings upon challenges of jurors are unheard of. An English judge's rulings upon the challenge of a juryman for cause are not subject to review as they are here.

8. No trial by newspaper; no publicity bureau work is allowed while any action whether criminal or civil, is pending; only a true and fair report of evidence and court proceedings is allowed to be published pendente lite; sweat box and third degree are unknown alike among the police and public prosecutors. Trial by newspaper and publicity bureau work pendente lite are suppressed by vigorous enforcement of the common law practice in relation to contempt of court.

9. Reversals on appeal for harmless technical errors not affecting the result are unheard of. In Great Britain on appeal by defendant a sentence may be increased.

10. The keeping and publication of complete, scientific and yet laconic judicial statistics, both criminal statistics and civil statistics.

11. Bar discipline is strictly enforced.

Throughout the British Empire there is a universal respect for the courts and the law, especially for the criminal law, which is unknown in this country.

(22) 2 Popular Tribunals, 747.

The primary duty of all governments is to preserve life and enforce the public order and security by enforcing the criminal law as well as necessary police regulations. When this duty is locally or partially neglected, unless extra legal vigilance supplements the defective administration of the criminal law, local turbulence, riots and anarchy until suppressed by martial law are probable sooner or later.

When this duty is generally neglected throughout a nation for a sufficient period of time, class conflicts, general strikes, sectional strife, revolution or social war will usually follow unless the local disturbances or general national weakness becomes so great as to cause a foreign nation whose people are disciplined and orderly (though perchance with a lower standard of living, i. e. with more plain living and more high thinking), to send either a punitive expedition to punish and procure indemnity for lawless outrages upon or assassinations of its nationals, or else an invading army to conquer and annex the decadent and anarchical country, as was done in the several partitions of the Polish Commonwealth during the 18th century; in Italy during the 16th century; as well as following the decline of Greece and the Greek cities of Asia Minor and Southern Italy by the Roman Republic.

HENRY A. FORSTER.

New York City.

ASSIGNMENT—FUTURE BOOK ACCOUNT.

TAYLOR v. BARTON-CHILD CO.

(Supreme Judicial Court of Massachusetts. Suffolk. Sept. 15, 1917.)

117 N. E. 43.

The assignment of book accounts which are to come into existence in the future in connection with an established business will not be enforced in equity against the trustee in bankruptcy, although a "book account" is a chose in action.

RUGG, C. J. This is a suit in equity to enforce rights of the plaintiff under an assignment of book accounts made to her assignor by the defendant corporation as security for a loan. It is undisputed that on December 3, 1910, one McCarthy, who is the assignor of the plaintiff, lent to the defendant $5,000 and received its seven notes with different due dates, the most remote being June 3, 1913. As security for and in consideration of the loan, on the same day the defendant executed and delivered to the plaintiff's assignor an instrument which, it is contended, was an assignment of its present and future book accounts. Some of the notes were extended, some have been paid, and a balance remains unpaid. This bill was filed on February 2, 1914. An injunction respecting the book accounts was issued on February 13, 1914. The defendant was adjudicated a bankrupt on February 13, 1914. Its trustee in bankruptcy is defending this cause.

At the time of the loan the defendant was engaged in dealing at wholesale in butter, eggs and similar products and needed the money borrowed of the plaintiff's assignor for carrying on its business, and used it for that purpose. The book accounts at the time of the assignment were between $25,000 and $30,000, some of which were due, but the greater part of them would become due within the next 60 days.

The crucial question is whether the assignment of book accounts, which are to come into existence in the future in connection with an established business, will be enforced in equity against a trustee in bankruptcy.

It is a well recognized principle of the common law that a man cannot sell or mortgage property which he does not possess and to which he has no title. The vendor must have a vested right in personal property in order to be able to make a sale of it. "A man cannot grant or charge that which he hath not." Jones v. Richardson, 10 Metc. 481, 488; Moody v. Wright, 13 Metc. 17, 46 Am. Dec. 706; Leverett v. Barnwell, 214 Mass. 105, 109, 101 N. E. 75.

The ground of our decisions may be stated shortly. There can be no present conveyance or transfer of property not in existence or of property not in the possession of the seller to which he has no title. A sale of personal chattels is not good against creditors unless there has been a delivery. Manifestly there can be no delivery of chattels not in existence. In order that after-acquired chattels may be brought under the lien of a mortgage, or of hypothecation, there must be some act of the parties subsequent to the time when such chattels come into existence and into the ownership and

possession of the mortgagor. The mortgage is held not to have the effect of changing the title to after-acquired chattels without some further act of the parties.

There is an exception at the common law to the effect that one may sell that in which he has a potential title although not present actual possession. The present owner might sell the wool to be grown upon his flock, the crop to be harvested from his field or the young to be born of his herd, or assign the wages to be earned under existing employment. Kerr v. Crane, 212 Mass. 224, 229, 98 N. E. 783, 40 L. R. A. (N. S.) 692; St. Johns v. Charles, 105 Mass 262; Farrar v. Smith, 64 Me. 74, 77; McCarty v. Blevins, 5 Yerg. (Tenn.) 195, 26 Am. Dec. 262; Dugas v. Lawrence, 19 Ga. 557. But see now Sales Act, St. 1908, c. 237, § 5 (3). That principle of the common law has never been carried so far as to include the case at bar. The catch of fish expected to be made upon a voyage about to begin cannot be sold. Low. v. Pew, 108 Mass. 347, 11 Am. Rep. 357. There can be no sale of the wool of sheep, the crop of a field, or the increase of herds not owned but to be bought, and there can be no assignment of wages to be earned under a contract of employment to be made in the future. Eagan v. Luby, 133 Mass. 543; Citizens' Loan & Trust Co. v. Boston & Maine R. R., 196 Mass. 528, 531, 82 N. E. 696, 14 L. R. A. (N. S.) 1025, 124 Am St. Rep. 584, 13 Ann. Cas. 365.

It is also the established doctrine in this commonwealth that a mortgage of future acquired property will not be enforced in equity before actual possession taken by the mortgagee as against persons subsequently acquiring an interest therein for value and having possession That has long been settled although the contrary rule prevails more widely. Federal Trust Co. v. Bristol County St. Ry. Co., 222 Mass. 35, 45, 46, 109 N. E. 880, where cases are collected. It would be anomalous for a court governed by these principles as to sales and mortgages of future acquired goods and chattels to hold that there could be an assignment of future acquired book accounts valid and enforceable under circumstances where a like attempt to hypothecate future acquired chattels would be held unenforceable.

A book account is a chose in action. It is "a right not reduced into possession" which "can * * * be reduced into beneficial possession by an action or suit." Haskell v. Blair, 3 Cush. 534, 535. It is property. While some of its incidents differ from those of a tangible thing, these are not sufficient to warrant the application to it of principles of law different in the respect here involved from those governing transactions concerning property with a physical and tangible body. Where it is reasonably practicable, it is desirable in the development of an harmonious system of jurisprudence that the same general rules of law should be applicable to the same classes of facts and that exceptions having their foundation more upon appearances than upon differences of substance should not be multiplied.

Practical difficulties of no small consequence would be encountered in the operation of the contrary doctrine. Assignments of book accounts do not require recording or any public act for their validity. Marsh v. Woodbury, 1 Metc. 436; Gilligan Co. v. Casey, 205 Mass. 26, 91 N. E. 124. Notice need not be given in order that it be valid against third persons. Thayer v. Daniels, 113 Mass. 129; Cropper v. Gorham, 221 Mass., 119, 125, 109 N. E. 161. Merchants and manufacturers well might acquire a considerable credit upon the supposed strength of book accounts which later might turn out to have been assigned long before they came into existence. A door would be opened for the accomplishment of fraud in business.

There are decisions by the courts of other jurisdictions where a contrary result has been reached. Union Trust Co. v. Bulkeley, 80 C. C. A. 328, 150 Fed. 510; In re Macauley (D. C.) 158 Fed. 322; Tailby v. Official Receiver, 13 App. Cases, 523. These decisions follow naturally from Holroyd v. Marshall, 10 H. L. C. 191, Central Trust Co. v. Kneeland, 138 U. S. 414, 419, 11 Sup. Ct. 357, 34 L. Ed. 1014, and other cases holding that mortgages of future acquired personal property are enforceable in equity. But as has been pointed out, that is not the law of this commonwealth.

The principles and spirit of our jurisprudence have been that owners of personal property ought not to acquire any false credit by creating incumbrances more or less secret and unknown to the world upon property of which they are to come into possession in the future as ostensible owners in absolute right. Blanchard v. Cooke, 144 Mass. 207, 223, 227, 11 N. E. 83; Wasserman v. McDonnell, 190 Mass. 326, 76 N. E. 959; Schlatter v. Young, 197 Mass. 36, 38, 83 N. E. 2; Chick v. Nute, 176 Mass. 57, 57 N. E. 219; Wilson v. Russell, 136 Mass. 211; Harriman v Woburn Elec. Light Co., 163 Mass. 85, 39 N. E. 1004. It was held in Hall v. Jackson, 20 Pick. 194, that an irrevocable power of attorney to bankers to collect debts due to a manufacturer from his customers, as security

for advances made by the bankers, did not constitute a lien against an attachment by trustee process, in the absence of possession, control or disposing power in the person claiming the lien over the subject matter in which the lien was claimed. See, also, Elmore v. Symonds, 183 Mass. 321, 67 N. E. 314. In the light of these decisions it would be illogical and discordant with the policy of our law to uphold the assignment in the case at bar. It was held in Purcell v. Mather, 35 Ala. 570, 76 Am. Dec. 307, Skipper v. Stokes, 42 Ala. 255, 94 Am. Dec. 646, and Clanton Bank v. Robinson, 195 Ala. 194, 70 South. 270, that assignments similar to those here in question were invalid.

In accordance with the terms of the reservation let the entry be:

Bill dismissed without costs.

NOTE.—*Assignment of Future Book Accounts of an Eestablished Business.*—The instant case concedes that it naturally follows from the principle of the right to mortgage what may afterwards come into existence, that also one may assign. It was upon this theory that Union Trust Co. v. Bulkely, 150 Fed. 510, 80 C. C. A. 328, ruled that one in business has the right, even by parol, to assign, as against a trustee in bankruptcy, his accounts and bills receivable to be afterwards acquired in the course of his business. This court adopted as its own an opinion by the district judge in which much authority is cited.

In discussing the principle as ruled by Maine court that there must be existence or potentiality of existence in present contracts or conditions, this was held not to exclude an assignment of wages expected to be earned in the future in a specified employment, though they be not earned under an existing employment. Edwards v. Peterson, 80 Me. 367. It appears in this case that when the assignment was executed there was employment, but the employe was discharged on the following day, but both assignor and his employer expected that re-employment would soon occur, as it did.

The Maine court quoted from Judge Story as follows: "It seems to me a clear result of the authorities, that, whenever the parties by their contract intend to create a positive lien or charge, either upon personal or real property, whether then owned by the assignor or contractor or not, or, if personal property, whether it is then in *esse* or not, it attaches in equity as a lien or charge upon the particular property, as soon as the assignor or contractor acquires a title thereto, against the latter and all persons asserting a claim thereto under him, either voluntarily, or with notice, or in bankruptcy." Edwards v. Peterson, 2 Story 230. This is a very broad rule and it says nothing whatever about potential existence, but it implies, possibly, the existence of a reasonable expectancy.

According to English House of Lords, an assignment of future book debts, even though not limited to book debts in any particular business, may be so well defined as to pass an equitable interest. Tailby v. Official Receiver (1888) 13 App. Cas. 523.

Lord Herschel said in this case: "I confess I am unable to see any sound distinction between one instrument assigning future book debts, which may become due to the assignor in any business carried on by him and one assigning future bequests and devises or to which he may under any will become entitled. The subjects of both assignments are equally wide, equally incapable of ascertainment at the time of the assignment, but equally capable of identification when the subject has come into existence, and it is sought to enforce the security." He then refers to cases as to bequests and devises.

Lord Macnaghten, in the same case, in referring to book debts, which were assigned besides those in the business "immediately contemplated" by the parties, said: "It was admitted by the learned counsel for respondent, that a trader may assign his future book debts in a specified business. Why should the line be drawn there? Between men of full age and competent understanding ought there to be any limit to the freedom of contract but that imposed by positive law or dictated by considerations of morality or public policy? * * * The truth is that cases of equitable assignment or specifice lien, where the consideration has passed, depend on the real meaning of the agreement between the parties. The difficulty, generally speaking, is to ascertain the true scope and effect of the agreement. When that is ascertained you have only to apply the principle that equity considers that done which ought to be done, if that principle is applicable under the circumstances of the case."

By this we see that there is not observance of strict technical rules, such as the instant case invokes. If there is a contract whose application is certain to property coming into future existence, equity will enforce it so far as it may and will not be deterred by the practical difficulties spoken of by the instant case. If they are such, statute, which declares state policy, should be looked to to obviate them. In not preventing such assignments, courts do not interfere with the free right of contract. C.

BOOK REVIEW.

BRUMBAUGH'S LEGAL REASONING AND BRIEFING.

This work is by Professor Jesse Franklin Brumbaugh, A. M., LL. D., and is the product of an experience of many years as a teacher. In this experience he has trained students in public speaking and argumentation and has taught Logic, Brief, Drawing and Common-Law Pleading.

This work is not only very instructive in a philosophical way, but it abounds in practical suggestion. Its chapters on the Style of Reasoning, deductive and inductive, do something more

than afford definition, but they contrast the methods as to their force and show when one or the other must be resorted to and forcefully applied. Those on Estimation of the Sources of law and of Legal Literature and of Evidence, are well constructed. These being considered brings us to the practical purpose of the author —the use counsel makes of them in argument to juries and courts. In the order of experience there is reached the Brief. Its construction so as to persuade or convince, to assert or repel, to distinguish or squarely oppose, is usefully set forth.

On the whole we think, that this work, which easily might be too didactic and reflect too much mere personal views, is liberal in treatment and practical in effect. It is not tedious to read, but interestingly informative all through. The work closes very practically with a chapter entitled "Illustrative Briefs." The first impression of this book was sold so rapidly, that it was replaced with the second.

This book in one volume is well printed, well-indexed as to subjects and comes from the publishing house of Bobbs-Merrill Company, Indianapolis, 1917.

BOOKS RECEIVED.

The American Digest Annotated, Key Number Series, Vol. 2A, continuing the Century Digest and the First and Second Decennial Digests. A Digest of all Current Decisions of all the American Courts, as Reported in the National Reporter System, the Official Reports and elsewhere, from September 1, 1916, to February 28, 1917; and digested in the Monthly Advance Sheets for October, 1916, to and including March, 1917 (Nos. 313-318). Prepared and edited by the Editorial Staff of the American Digest System. St. Paul. West Publishing Company. 1917. Review will follow.

Business Law for Engineers. By C. Frank Allen, member American Society of Civil Engineers; member Massachusetts Bar; member American Railway Engineering Association; formerly Professor of Railroad Engineering, Massachusetts Institute of Technology. Part I, elements of Law for Engineers; Part II, Contract Letting. First Edition. McGraw-Hill Book Company, Inc. New York. 1917. Price, $3.00. Review will follow.

HUMOR OF THE LAW.

An Irish witness was once asked:

"What do you know of the defendant's reputation?"

"Faith! I know this—that rather than live wid her, I'd marry the divil's daughter and go home and live wid the ould folks.—Top-Notch.

A Quaker had gotten himself into trouble with the authorities, and the sheriff called to escort him to the lockup.

"Is your husband in?" he inquired of the good wife who came to the door.

"My husband will see thee," she replied. "Come in."

The sheriff entered, was bidden to make himself at home, and was hospitably entertained for half an hour, but no husband appeared. At last the sheriff grew impatient.

"Look here," he said, "I thought you said your husband would see me."

"He has seen thee," was the calm reply, "but he did not like thy looks and has gone another way."—Harper's Weekly.

Erastus Phinney, black, thirty-two, and in uniform, stood before the judge. He bore the marks of recent battle, but smiled pleasantly through two or three stitches and a yard or so of court-plaster.

"Charged with assaulting five men at a dance," said the judge. "What have you to say, Erastus?"

"I suttenly did razor dem coons," admitted the prisoner.

"You're just back from Mexico, too, I understand."

"Yas, suh, yo' honor."

"Have you no respect for your country or your flag?"

"Now, listen, jedge, dem things didn't hab nuthin' ter do wid it at *all*. I went ter dis dance an' mah unifo'm done attract de ladies. Dey des flocked an' dey flocked. Dat's whut made dem yeller no 'counts mussy. Dey jealous, jedge; I done took fo' han'some gals ter de ice cream counter and den de trouble begin."

"But you invited it, didn't you?"

"No, yo honah! Hit des' follored us ter de ice cream. Den one of dem chocolate coons said: 'Niggah, yo is de las' drop er sweat off'n de las' candle, and it's kaze yer tongue is a wick dat makes yo' sputter when yo' talks.' An' dat wuz whar de razor wuz drawn, yo' honah."—Case and Comment.

WEEKLY DIGEST

Weekly Digest of ALL the Important Opinions of ALL the State and Territorial Courts of Last Resort and of ALL the Federal Courts.

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1. **Adverse Possession**—Public Rights.—Citizen acquires no rights as against the public by maintenance of a fence in a public park, as public's rights are not lost by encroachment, however long continued.—Schmitt v. City of Carbondale, Pa., 101 Atl. 755.

2. **Alteration of Instruments**—Evidence.—Under Negotiable Instruments Law, § 33, holder of note blank as to time of payment has prima facie authority to fill in such blank and make note payable at a fixed time, which act does not "alter" the instrument, but evidence is admissible to show want of actual authority.—Bloom v. Horwitz., N. Y., 166 N. Y. S. 786.

3. **Assignments for Benefit of Creditors**—Estoppel.—Creditor, who, after assignment for benefit of creditors, attends creditors' meeting and presents his claim, with knowledge of assignee's purpose to close debtor's business, waives all objections to regularity of assignment and assignee's title to assets.—Henry Cowell Lime & Cement Co. v. Smith, Cal., 166 Pac. 1018.

4. **Attachment**—Custodia Legis.—To effect an attachment of personal property, it must be taken into the custody of the officer serving the writ; and, unless that is done, there is no existing attachment.—Green v. Hooper, Nev., 167 Pac. 23.

5. **Attorney and Client**—Evidence.—Where attorney who engaged plaintiff to analyze sample of flour informed plaintiff that he was acting for client, naming him, and did not agree to become personally liable, it was error to enter judgment against attorney in suit against him and client.—Research Laboratories, Inc., v. Harrison, N. Y., 166 N. Y. S. 706.

6. **Bankruptcy**—Attorney Fee.—Where a bankrupt, offering a composition, has made a deposit for his attorneys, the amount thereof will be used to meet the expenses of the composition and of the bankruptcy proceedings, if necessary.—In re Miller, U. S. D. C., 243 Fed. 242.

7.——Composition.—After offer of composition, expenses of conducting the bankruptiy proceeding should be secured by the bankrupt, and, if necessary, paid out of the amount deposited for the purposes of the composition.—In re Miller, U. S. D. C., 243 Fed. 242.

8.——Collateral Attack.—Judgment obtained by default a few days before bankruptcy on note to former stockholder for stock sold to third person held subject to collateral attack as obtained by collusion or fraud.—In re Stucky Trucking & Rigging Co., U. S. D. C., 243 Fed. 287.

9.——Evidence.—In deciding whether a conveyance by a bankrupt hindered, delayed, and defrauded creditors, so as to defeat a discharge, it is of no controlling importance that the trustee has not been able, or has not tried, to avoid it.—Devorkin v. Security Bank & Trust Co. of Memphis, Tenn., U. S. C. C. A., 243 Fed. 171.

10.——Fraud.—Discharge in bankruptcy does not relieve bankrupt from liability on actions for fraud, or obtaining property on false pretenses or false representations.—Brandt v. Klement, Ga., 93 S. E. 255.

11.——Jurisdiction.—Under Bankr. Act, § 23, subd. "a," "b," bankruptcy court has no jurisdiction of controversies with adverse claimant, whose claim does not rest upon mere pretense, put forward in bad faith, whether it involves a question of law or one of fact.—In re Midtown Contracting Co., U. S. C. C. A., 243 Fed. 56.

12.——Mechanic's Lien.—Mechanic's lien filed 90 days after completion of work, but not until owner had voluntarily been adjudged bankrupt, has priority over claims of trustees of bankrupt, regardless of Bankruptcy Act Amendment 1910.—Horton v. Queens County Machinery Corp., N. Y., 166 N. Y. S. 662.

13.——Practice.—Where trustee in bankruptcy claimed as against bankrupt income arising under testamentary trust for her benefit, held, that trustee could not be required to accept bond and allow payment of sum to bankrupt.—In re Reynolds, U. S. D. C., 243 Fed. 272.

14.——Summary Proceeding.—Claim by board of education to material and plant of defaulting contractor, of which it took possession before bankruptcy, held not determinable in a summary proceeding, except with the board's consent.—In re Midtown Contracting Co., U. S. C. C. A., 243 Fed. 56.

15. **Banks and Banking**—Insolvency.—Where owner of bank stock sold it to cashier, and on delivering certificate, months before bank closed, requested cashier to transfer stock on books, held, that owner was not liable to assessment on insolvency of bank.—Jackson v. Freeman, Ga., 93 S. E. 284.

16.——Notice of Injunction.—Where copy of injunction was served on defendant bank's cashier, knowledge of cashier thus acquired was knowledge of the bank.—Reynolds v. Webb, N. Y., 166 N. Y. S. 668.

17. **Bills and Notes**—Filling Blanks.—Where a note blank as to time of payment was delivered to one without any actual authority to fill in blank and on the understanding that it was a completed note payable on demand, the possessor had no right to fill in the blank.—Bloom v. Horwitz, N. Y., 166 N. Y. S. 786.

18.——Plea of Payment.—Where answer admits execution of note sued upon and pleads payment and set-off, the note need not be put in evidence.—Dill v. Malot, Okla., 167 Pac. 219.

19. **Breach of Marriage Promise**—Damages.—Possible inheritance or gift by will cannot be considered as element of damages in breach of promise, although inchoate right of dower may be so considered.—O'Brien v. Manning, N. Y., 166 N. Y. S. 760.

20. **Brokers**—Evidence.—Where there is evidence that brokers who negotiated trade of two lots procured loan to erect building on one of them, that lender, in accordance with his custom, paid broker amount of loan, leaving to them matter of ascertaining that title was clear, court's finding that broker was agent of lender is proper.—Walker v. Baumeister, Cal., 166 Pac. 1037.

21.——Procuring Cause.—Real estate agent is procuring cause of a trade arising from his introduction of other party to his principal, or his introduction of his principal to agent of owner of realty with whom trade is made.—Jackson v. Brower, N. M., 167 Pac. 6.

22. **Carriers of Goods**—Act of God.—In action for destruction of goods by unprecedented flood while in railroad yard, notice of a rise in a river issued by government weather observer held inadmissible to show railroad's negligence.—International Paper Co. v. New York Cent. R. Co., N. Y., 166 N. Y. S. 751.

23.——Bill of Lading.—Where railroad agent weighed cotton for shipment, and inserted in bill of lading number of bales and total weight, and shipper attached to bill of lading a draft, which was paid by innocent transferee, railroad is bound by recital of weight, though it was in excess of actual weight, unless error was apparent on face of bill of lading.—Atlantic Coast Line R. Co. v. Luke & Fleming, Ga., 93 S. E. 286.

24.——Customary Route.—Where interstate shipment of liquor was not routed by customary route, carrier was not bound to deliver to irresponsible delivery company within state, but had right to cause deviation from designated route.—State v. Great Northern Ry. Co., Wash., 167 Pac. 103.

25. **Champerty and Maintenance**—Indian Lands.—State statutes relating to champerty do not apply to restricted Indian lands, and conveyance in accordance with Acts of Congress is valid as against whole world.—Murrow Indian Orphans' Home v. McClendon, Okla., 166 Pac. 1101.

26.——Speculative Suits.—Where lawyer, for services for which he was willing to settle for $5,000, took assignment of claim under Sherman Anti-Trust Law which he thought worth at least $75,000, held, that the transaction was champertous.—Sampliner v. Motion Picture Patents Co., U. S. D. C., 243 Fed. 277.

27. **Chattel Mortgages**—Tender.—Statement to mortgagee by possessor of mortgaged mules, "If you are going to take those mules, take them now before I fatten them," without offer to surrender mules, was not a tender.—Brown v. Rankin, S. C., 93 S. E. 327.

28. **Commerce**—Interstate Shipment.—If interstate shipment was destined to be delivered in this state, and defendant railroad had reason to so believe, such liquor could be confiscated within state in view of Webb-Kenyon Act, removing protection of interstate commerce clause of Const. U. S. art. 1, § 8.—State v. Great Northern Ry. Co., Wash., 167 Pac. 103.

29.——Intoxicating Liquor.—Webb-Kenyon Act held to take away the protection of interstate commerce from all receipt and possession of liquor prohibited by state laws.—The Hamm Brewing Co. v. Chicago, R. I. & P. Ry. Co., U. S. C. C. A., 243 Fed. 143.

30. **Contract**—Surety Company.—Owner of building to be erected, which took surety bond for completion of work, was not bound to execute mortgage securing notes to contractor for unpaid portion of price, and to look to surety company to pay lien claims incurred by contractor.—W. F. Jahn & Co. v. Coast Const. Co., Wash., 166 Pac. 1137.

31. **Corporations**—Donees of Stock.—Holders of common stock issued gratuitously to holders of preferred stock have no right of recovery between themselves because donations of common stock were unequal.—Hoffard v. Williams Shoe Co., Ohio, 117 N. E. 17.

32.——Evidence.—Where corporation by resolution fixed extra compensation for its officers, no formal contract between it and its officers is required to fix its liability; but such resolution, when acted on, is in itself sufficient evidence of contract.—Sotter v. Coatesville Boiler Works, Pa., 101 Atl. 744.

33.——Fraud.—In action by corporation lessee against lessors, who were also officers of corporation, evidence that plaintiff was originally assignee of prior lease, that terms of lease in suit were same as the prior lease, and that lessors subsequently sold the property for a lump sum and required a portion of the annual rent to be paid to them, held insufficient to show fraud of the officers.—American Piano Co. v. Knabe, Md., 101 Atl. 680.

34.——Sale of Stock.—Mining company did not violate Rem. Code, § 3694, prohibting sale of stock on assessments at office of company, by holding sale on street by licensed auctioneer in front of one of doors to building in which company had its office.—Mitchell v. Blue Star Mining Co., Wash. 167 Pac. 130.

35.——Stockholder.—Where stockholder sells shares of stock to another stockholder under agreement by which stock is to be paid for out of assets of corporation, seller is liable to corporation creditors to extent of value received.—Garrow v. Fraser, Wash., 167 Pac. 75.

36. **Covenants**—Conveyance of Land.—Owner's covenant in agreement to convey land lying between ocean and street parallel with shore that all lands which should be made by accretions from the ocean, etc., should be subdivided into lots, etc., held not limited to accretions to part of owner's tract not lying to seaward of land covered by conveyance.—Lambert v. Vare, N. J., 101 Atl. 726.

37. **Death**—Misrepresentation as to Age.—In father's action under suvivor statute for suffering endured by deceased minor son, injured when employed by railroad, negligence of father in fraudulently misrepresenting age of son as over 17 could be urged by road as defense.—Crevelli v. Chicago, M. & St. P. Ry. Co., Wash., 167 Pac. 66.

38. **Divorce** — Circumstantial Evidence. — In suit for divorce on ground of husband's adultery, evidence referring to circumstances proven in wife's former suit on same ground was admissible as reflecting upon husband's subsequent conduct.—Dicus v. Dicus, Md., 101 Atl. 697.

39. **Eminent Domain**—Police Power.—Cutting down by city of trees interfering with its sewage system was an exercise of its police power, and not an exercise of power of eminent domain, within Const. 1901, § 235.—City of Birmingham v. Graves, Ala., 76 So. 395.

40. **Execution**—Demurrer.—Affidavit of illegality interposed against execution levied to recover paving assessment, which merely recited that execution was illegal, and that whole of amount stated was not due, and denied that any part was due, is subject to special demurrer for failure to allege facts showing illegality. —Dixon v. City of Savannah, Ga., 93 S. E. 274.

41. **False Imprisonment**—Punitive Damages.—In actions for false imprisonment, jury may consider quality of act complained of, and intent with which it was committed, and, if finding there was ill will or recklessness, may award punitive damages.—Jones v. Pickard, N. Y., 166 N. Y. S. 721.

42. **Food**—Negligence.—Proprietor of eating house serving cake packed and prepared by it containing a nail on which guest bit while eating it held not liable for injury.—Jacobs v. Childs Co., N. Y., 166 N. Y. S. 798.

43. **Frauds, Statute of**—Executed Contract—Understanding between corporation and its general manager, having a ten-year contract, that sums paid him should be in full, held not within statute of frauds, as it was fully executed, and not for any fixed period.—Hansen v. Uniform Seamless Wire Co., U. S. C. C. A., 243 Fed. 177.

44. **Fraudulent Conveyances**—Evidence. — In suit seeking to have transfer by plaintiff's partner of interest in partnership declared void, evidence held sufficient to show fraud on part of transferror.—Rossen v. Villanueva, Cal., 166 Pac. 1004.

45.——Husband and Wife.—Husband's conveyance of property to his wife for support of herself and their children, in consideration of articles of separation, is valid, and vests title in her as against his creditors not holding a lien against it.—Farmers' State Bank of Ada v. Keen, Okla., 167 Pac. 207.

46. **Gaming**—Recovery of Money Lost.—Third person whose money, without his consent, has been lost at gambling, may recover in action at law against persons winning and receiving it, whether they are principals or agents in conducting the gaming.—Becker v. Fitch, Okla., 167 Pac. 202.

47. **Gas**—Exchange of Lands.—Where lands of ward were really exchanged for other lands, though record of county court purported to show actual sale, proceeding is voidable, and ward, in action against persons so acquiring lands with knowledge, may recover proceeds, where land has been conveyed to innocent purchaser.—Perkins v. Middleton, Okla., 166 Pac. 1104.

48. **Gifts**—Causa Mortis.—Deceased's statement during his last illness, "I give you my automobile, May," constituted good gift causa mortis satisfying rule of law requiring delivery where beneficiary took and had charge of automobile for several days thereafter.—MacKenzie v. Steeves, Wash., 167 Pac. 50.

49. **Indictment and Information**—Misnomer.—Where indictment charged that defendant's name was M. P., "to the grand jury otherwise unknown," defendant's plea of misnomer was demurrable, where it did not controvert allegation that defendant's name was unknown; Code 1907, § 7142, permitting such an allegation.—Putnam v. State, Ala., 76 So. 408.

50. **Injunction** — Labor Union. — Where employer of nonunion labor is injured by refusal of union workmen to work on job where nonunion men are employed, such injury being intended by defendants, he is entitled to injunction against such action, unless they show justification.—Cohn & Roth Electric Co. v. Bricklayers', Masons' & Plasterers' Local Union No. 1, Conn., 101 Atl. 659.

51. **Insurance**—Double Indemnity. — Insured, injured while alighting from taxicab, which he had engaged for certain trip, could not recover double indemnity, under policy providing therefor in case of injury on public conveyance provided by common carrier for passenger service. —Anderson v. Fidelity & Casualty Co. of New York, N. Y., 166 N. Y. S. 640.

52.——Total Loss.—Where there is no ability to see and recognize objects, the entire sight of an eye will be deemed lost, within a policy providing indemnity for such loss, though light can be distinguished from darkness.—Murray v. Aetna Life Ins. Co., U. S. D. C., 243 Fed. 285.

53.——Unincorporated Association.—Under insurance policy of unincorporated association providing for suit against individual members, held action would lie against association in name, its attorney in fact and two members.—Mountain Timber Co. v. Manufacturing Wood Workers' Underwriters, Wash., 167 Pac. 93.

54.——Vested Interest.—Beneficiary under life insurance policy takes a vested interest thereunder when issued, and where there is no right to revocation, or change of beneficiaries, insured cannot, by assignment or other act, invalidate or destroy policy.—Caplin v. Penn Mut. Life Ins. Co., N. Y., 166 N. Y. S. 675.

55.——Waiver.—Fraternal insurer by absolute denial of liability waives requirement that beneficiary should first pursue remedies in courts of order.—District Grand Lodge No. 18, Grand United Order of Odd Fellows v. Webb, Ga., 93 S. E. 259.

56. **Landlord and Tenant**—Crop Contract.—Where a landowner contracts with another to furnish land, stock, tools, and supplies to make a crop, other person to perform labor and receive part of crop, relation of landlord and cropper is created.—Kiker v. Jones, Ga., 93 S. E. 253.

57.——Equity.—Courts of equity will not lend their assistance to the enforcement of the forfeiture of a lease for nonpayment of rent, but will leave the parties to their legal remedies.—Smith v. People's Natural Gas Co., Pa., 101 Atl. 739.

58.——Estoppel.—Lessor, suing for accrued rents or to eject the lessee for nonpayment of rents, is not thereby estopped to question validity of a defectively executed lease.—Lithograph Bldg. Co. v. Watt, Ohio, 117 N. E. 25.

59. **Libel and Slander**—Individuals as a Class.—It is as unlawful to publish libelous matter against a class as against individuals.—Crane v. State, Okla., 166 Pac. 1110.

60.—**Licenses**—Classification.—Laws 1916, c. 704, § 172, basing license fee for privilege of dealing in junk upon population of the counties or towns where conducted, is based upon accepted theory of classification.—State v. Shapiro, Md., 101 Atl. 703.

61. **Logs and Logging**—Sale of Timber.—Since the owner of land, who sells mineral and coal right, with the right to cut timber necessary to the mine, retains the title to the timber until cut for mining purposes, a purchaser of the timber from him before it is so cut cannot rescind the contract upon the ground that the seller has no title.—H. H. Hitt Lumber Co. v. Cullman Coal & Coke Co., Ala., 76 So. 347.

62. —**Mandamus** — Ministerial Acts. — Unless there was duty on water board of city to have installed the water in a residence, the property owners were not entitled to writ of mandamus against the board.—Lee v. Leitch, Md., 101 Atl. 716.

63.——Remedy.—Where trial court found relator to be entitled to divorce, but as a condition precedent to decree required him to furnish bond for maintenance of minor child of marriage, held that the mandamus would not issue to compel entry of divorce decree on ground that requirement as to bond was erroneous.—State v. Hoffman, Ohio, 117 N. E. 10.

64. **Master and Servant**—Assumption of Risk.—In action under the federal Employers' Liability Act, no violation of federal statutes for protection of employes being alleged, assumption of risk is available as complete defense, and there is no presumption of negligence.—Southern Ry. Co. v. Blackwell, Ga., 93 S. E. 321.

65.——Hours of Service Act.—Parting of a train on a curve, due to worn places on knuckles of automatic couplers, held not an unavoidable accident or casualty, within Hours of Service Act, excusing railroad company from keeping employes on duty for more than 16 hours.—Atchison T. & S. F. Ry. Co. v. United States, U. S. C. C. A., 243 Fed. 114.

66.——Proximate Cause.—Master's failure to comply with ordinance requiring windows to be equipped with suitable device to permit their exterior cleaning with safety, proximately causing death of window cleaner, was negligence.—Neave Bldg. Co. v. Roudebush, Ohio, 117 N. E. 22.

67.——Workmen's Compensation Act.—Minor, shot while leaving mine by mine guard who believed he was justified in so doing, is entitled to recover under Workmen's Compensation Act, since injury was caused by negligent performance of act of fellow employe within general scope of his duties.—Atolia Mining Co. v. Industrial Acc. Commission, Cal., 167 Pac. 148.

68. **Mines and Minerals**—Trespass.—Trespass for unlawful mining of coal from land could not be maintained, where surface was in possession of parties holding adversely, and plaintiffs were never in constructive possession of coal.—Griffin v. Delaware & Hudson Co., Pa., 101 Atl. 750.

69. **Mortgages**—Doctrine of Two Funds—Upon foreclosure of mortgage on lands situated in two counties, where there were judgments in both counties none of which had priority over others, mortgage must be paid out of two funds realized from sale of lands in both counties, each fund contributing ratably its proportion of mortgage debt, leaving surplus from lands in each county to be applied to judgment liens thereon.—Farmers' & Merchants' Bank v. Holliday, S. C., 93 S. E. 333.

70.——Estoppel.—Where agent of mortgagee represented to plaintiffs that he had money obtained upon mortgage and told them to go ahead and do work, mortgagee would be estopped to claim priority of its mortgage to liens of plaintiffs for work and materials.—Schweitzer v. Equitable Savings & Loan Ass'n, Wash., 167 Pac. 111.

71. **Municipal Corporations**—Building Permit.—City commissioners cannot arbitrarily refuse building permit to one who has complied, or plans to comply, with all laws and ordinances of city in respect to building operations.—City of Mobridge v Brown, S. D., 164 N. W. 94.

72.——Estoppel.—Where building has been erected on land dedicated as public park, an ordinance providing for condemnation of land occupied by building does not estop municipality from claiming property.—Schmitt v. City of Carbondale, Pa., 101 Atl. 755.

73.——Street Obstruction.—City of Augusta is powerless to grant carnival association right to erect in public street, and maintain thereon during carnival, shooting gallery, in which firearms are discharged, endangering persons lawfully on street.—City Council of City of Augusta v. Jackson, Ga., 93 S. E. 304.

74.——Street Travel.—Acts 1910, p. 90, declaring that any person operating automobile on any highway shall, on approaching bridge or crossing of intersecting highways, operate it at speed not greater than 6 miles per hour, applies to intersecting streets of municipality.—Moye v. Reddick, Ga., 93 S. E. 256.

75. **Names**—Idem Sonam.—The names Mans Putnam and Mance Putnam were "idem sonams," making defendant's plea of misnomer demurrable.—Putnam v. State, Ala., 76 So. 408.

76. **Navigable Waters**—Erosian and Accretion.—When deed calls for ocean as boundary, land conveyed extends to ocean for all time, whether high-water mark recedes or encroaches by natural accretions or erosions.—Lambert v. Vare, N. J., 101 Atl. 726.

77. **Negligence** — Evidence. — On the mere showing that a guest in defendant's eating house who was served a piece of cake baked and prepared by defendant, bit into a nail in the cake,

the doctrine of res ipsa loquitur did not apply. —Jacobs v. Childs Co., N. Y., 166 N. Y. S. 798.

78.——Evidence.—In action for injuries to plaintiff in entering defendants' store through revolving door, testimony offered by defendants that there were no revolving doors in use so constructed that person could not be knocked off feet by another coming behind him held properly excluded as foreign to issue.—Hochschild v. Cecil, Md., 101 Atl. 700.

79. **Nuisance**—Abatement.—Right of private citizen to abate public nuisance is no greater than necessity of case demands, and he must do no unnecessary injury to property of another, though obstructing public highway of travel so as to be public nuisance.—De Bardeleben Coal Co. v. Cox, Ala., 76 So. 409.

80. **Partnership** — Option. — Written contract for procurement of options on coal in place by one party thereto, providing for equal share of expenses and profits, under which coal is bought and sold for profit, constitutes "partnership agreement."—Teter v. Moore, W. Va., 93 S. E. 342.

81.——Surviving Partner—Surviving partner has no right to continue partnership business, where neither articles of partnership nor will of deceased partner so provides.—Maynard v. Maynard, Ga., 93 S. E. 289.

82. **Payment**—Presumption—Rule that after 20 years debts by specialty are presumed to be paid does not bar the debt, but merely affects the burden of proof, and is rebuttable by any competent evidence.—Sheafer v. Woodside, Pa., 101 Atl. 753.

83. **Principal and Agent**—Cancellation of Contract.—Where parties mutually rescinded contract giving plaintiff agency for sale of automobiles, clause requiring 10 days' notice of cancellation had no application, and plaintiff could not recover for cars sold after date of rescission.—Wetherby v. Mark, Wash., 166 Pac. 1143.

84.——Estoppel.—Where number joined in project for development of oil lease, one who received from his associates funds for purchase of interests in lease cannot defend his individual acquisition of lease on ground that there was no consideratiuon for his agreement.—Rees v. Egan, Okla., 166 Pac. 1038.

85.——Lease.—A lease, executed by one acting as agent not actually authorized by the owner to enter into such contracts, is ineffective as a contract to make a lease and not enforceable against owner.—Lithograph Bldg. Co. v. Watt, Ohio, 117 N. E. 25.

86. **Public Service Commissions**—Reasonable Charge.—Notwithstanding contracts between parties engaged in producing, furnishing, or transporting public utilities, reasonable charges only will be allowed as against the public.—St. Joseph Gas Co. v. Barker, U. S. D. C., 243 Fed. 206.

87. **Railroads** — Crossing Accident. — Person who, from point 150 feet from crossing, drove towards and upon the track without looking and listening, held guilty of negligence, preventing a recovery for his death.—Dernberger v. Baltimore & O. R. Co., U. S. C. C. A., 243 Fed. 21.

88. **Sales**—Estoppel.—Contract for sale of hay, providing that it shall be of same lot as that inspected by officer of purchaser, serves merely to identify hay, and is not admission that purchaser had inspected all hay sold so as to estop it from objecting as to its quality.—Farmers' Warehouse Co. v. Pierce-Ingram-Abbott Co., Cal., 167 Pac. 188.

89.——Implied Warranty.—Where written contract of sale of mule relieved seller of liability on implied warrants, etc., and it was not alleged that execution of notes for price was induced by artifice, etc., a plea setting up false representations as to the mule is bad.—Outlaw v. W. T. Park Live Stock Co., Ga., 93 S. E. 310.

90.——Transfer of Title.—Actual delivery and payment are not necessary to transfer title to goods sold, as goods may be sold on credit and without delivery, if the parties so intend.—Perkins v. Halpren, Pa., 101 Atl. 741.

91. **Specific Performance** — Enforcement, — Contract whereby testator in consideration of relinquishment to him of parental rights over his sister's minor children agreed that they should succeed to his property will not be enforced in their favor as against testator's wife, whom he subsequently married.—Sargent v. Corey, Cal., 166 Pac. 1021.

92. **Statute**—Interpretation.—Punctuation, being a fallible standard, is the last resort as an aid in the interpretation of a statute, though it may be resorted to when the meaning is doubtful.—State v. Fabbri, Wash., 167 Pac. 133.

93. **Subscriptions** — Consideration. — A subscription agreement to pay money to a charitable, benevolent, or educational institution is supported by good consideration, if, in reliance on it, an act has been done, money expended, or obligations incurred.—De Pauw University v. Ankeny, Wash., 166 Pac. 1148.

94. **Sunday**—Executory Contract.—The law will not aid enforcement of executory contract made on Sunday; but the parties to a contract fully executed on that day will be left where the law finds them, and no relief given to either.—Williams v. Philadelphia Rapid Transit Co., Pa., 101 Atl. 748.

95. **Telegraphs and Telephones**—Rules and Regulations.—A telegraph company must be prepared to furnish change to a reasonable amount to a person desiring to send a telegram and able to offer only a bank bill in payment; reasonableness, with reference to amount, time, and place, to be judicially determined.—Dale v. Western Union Telegraph Co., N. Y., 166 N. Y. S. 740.

96.——Voluntary Acts.—While addressee of telegram may recover damages proximately resulting from failure to promptly transmit message, he cannot recover damages resulting from his voluntary act in complying with terms of proposal, which he was under no legal compulsion to perform.—Postal Telegraph-Cable Co. v. J. J. Barnes-Fain Co., Ga., 93 S. E. 256.

97. **Vendor and Purchaser**—Mistake.—Where plaintiff paid deposit required by contract of purchase of land, without knowing that defendant had changed it by reducing time allowed plaintiff to examine title from 60 to 30 days, plaintiff may recover deposit on discovery of mistake.—Born v. Castle, Cal., 167 Pac. 138.

98. **Wills** — Consideration. — Where brother, who supported sister, and shortly afterwards made a will providing for her support, asked her to make a will in favor of him or his estate, held, that her will so made was supported by consideration, and irrevocable.—Chase v. Stevens, Cal., 166 Pac. 1035.

99.——Devise.—Devise to testator's son, his heirs and assigns, and that, if he should not marry and should die before another person named, the latter should inherit half of the property, gave devisee a fee simple on his marriage. —Gischell v. Ballman, Md., 101 Atl. 698.

100.——Trustee.—Devise to married daughter's separate use as if she were sole and unmarried intended a trust for her separate use, so that her petition to vacate her appointment as trustee for herself, filed during her husband's life, was properly dismissed.—In re Bringhurst's Estate, Pa., 101 Atl. 765.